

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

loanDepot.com, LLC

Plaintiff,

vs.

**CROSSCOUNTRY MORTGAGE, LLC,
STANISLAV ALESHIN, KEISHA
ANTOINE, ANTHONY AYALA, SCOTT
BONORA, FAHEEM HOSSAIN,
STUART KOLINSKY, BARRY KOVEN,
DANIEL KWIATKOWSKI, JAROSLAW
KWIATKOWSKI, YUSHENG LIU,
ROBERT LONDON, ENRICO
MARTINO, DANIEL MEIDAN, SCOTT
NADLER, GIOVANNI NARVAEZ,
DAVID OSTROWSKY, EMELINE
RAMOS, ROBERT RAUSH, RAFAEL
REYES, MICHAEL SECOR,
LLEWELLYN TEJADA, ILYA
VAYSBERG, ERIKA VIGNOLA, and YAN
ZHENG**

Defendants.

Case No. 1:22-cv-05971-AS
ECF Case

**INDIVIDUAL DEFENDANTS’
MOTION FOR LEAVE TO FILE A SUR-REPLY IN OPPOSITION TO LOANDEPOT’S
MOTION TO COMPEL ARBITRATION OF COUNTERCLAIMS**

Pursuant to the Court’s Individual Rules of Practice ¶ 8(C), Individual Defendants Scott Bonora (“Bonora”), Emeline Ramos (“Ramos”), Anthony Ayala (“Ayala”), Ilya Vaysberg (“Vaysberg”), and Faheem Hossain (“Hossain”) (collectively the “Individual Defendants¹”), move this Court for leave to file a sur-reply in opposition to Plaintiff LoanDepot.com, LLC’s (“loanDepot”) or (“Plaintiff”) Motion to Compel Arbitration. Attached hereto as **Exhibit 1** is the Individual

¹ For purposes of this Response, the term “Individual Defendants” is limited to only Defendants Bonora, Ramos, Ayala, Vaysberg, and Hossain.

Defendants' proposed sur-reply. The Individual Defendants state the following in support of this Motion:

"Motions for leave to file a sur-reply are subject to the sound discretion of the court." *Sec. and Exch. Comm'n v. Ripple*, 2022 WL 329211, at * 3 (S.D.N.Y Feb. 3, 2022) (internal citations omitted). Courts will permit parties to file a sur-reply "when they address arguments raised for the first time in a reply brief." *Id.* (granting leave to file a sur-reply when the sur-reply is directed to arguments the plaintiff raised for the first time in a reply).

Here, the Individual Defendants' proposed sur-reply addresses two narrow issues raised for the first time in Plaintiff's Reply Memorandum, Doc. No. 409 (the "Reply"). First, the proposed sur-reply addresses the fact that loanDepot, for the first time, filed an arbitration demand against the Individual Defendants on the *same day* it filed its Reply. *See* Doc. No. 409 (Reply) at n. 2, p. 3 and Doc. No. 410 (Declaration of Jessica F. Pizzutelli, Esq.) at ¶ 19; *see* **Ex. 1** (attached hereto) at pp. 2-4. As a practical matter, because loanDepot did not file their arbitration demand until the same day they filed their Reply, the Individual Defendants have not had an opportunity to respond to this issue, and thus address now in the proposed sur-reply. Second, the proposed sur-reply addresses arguments raised by loanDepot for the first time in the Reply relating to the testimony of loanDepot's 30(b)(6) deponent, Mark McGowen. *See* Doc. No. 409 (Reply) at p. 4; *see* **Ex. 1** (attached hereto) at pp. 4-5.

Given that the proposed sur-reply is limited to these two narrow issues raised for the first time in Plaintiff's Reply, the Court should grant the Individual Defendants' Motion for Leave. If leave is granted, the Individual Defendants request that they be permitted to file their sur-reply attached hereto as **Exhibit 1** *instantly*.

Dated: October 25, 2023

FOX ROTHSCHILD LLP

By: /s/ JEFFREY L. WIDMAN

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CERTIFICATE OF SERVICE

The undersigned, an attorney, states that on October 25, 2023, he caused a copy of the foregoing to be served on all counsel of record via the Court's ECF system.

/s/ Jeffrey L. Widman
Jeffrey L. Widman